

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper)	
Carrier Classification of)	DOCKET TG-072226
)	
)	ORDER 01
GLACIER RECYCLE, LLC;)	
HUNGRY BUZZARD RECOVERY, LLC;)	ORDER INSTITUTING SPECIAL
AND T&T RECOVERY, INC.)	PROCEEDING
)	
)	NOTICE OF PREHEARING
)	CONFERENCE
)	(Set for January 24, 2008, at 1:30
)	p.m.)
.....)	

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, institutes this special proceeding on its own motion to determine whether Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc. (collectively “the companies”), are operating as solid waste collection companies, hauling solid waste for compensation without the necessary certificate required for such operations by RCW 81.77.040. According to Commission records, the companies do not hold solid waste collection certificates from the Commission, but instead hold motor freight common carrier permits under RCW 81.80.
- 2 Pursuant to RCW 81.77.040, it is unlawful for a “solid waste collection company to operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation.” Under RCW 81.77, a solid waste collection company is defined as “every person ... operating ... vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation ... over any public highway in this state” as a common or contract carrier.
- 3 Under RCW 81.77.010(8), solid waste collection does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, or collecting or transporting recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation. Instead, transportation of these materials is regulated under RCW 81.80.

4 WAC 480-70-016 provides that “[p]ersons holding permits issued by the commission under the provisions of chapter 81.80 RCW, whose primary business is not the collection of solid waste, normally will also need to obtain a certificate of public convenience and necessity if they transport solid waste to a disposal site on more than an occasional basis, or if they hold themselves out to the public as providing solid waste collection service.” The rule further provides:

In determining whether operations require a solid waste certificate or a motor carrier permit, the commission will consider factors including, but not limited to:

- (a) The intent of the shipper;
- (b) The intended destination of the shipment;
- (c) The actual destination of the shipment;
- (d) Special handling or conditions placed on the shipment by the shipper and/or receiver;
- (e) The value of the commodity being transported;
- (f) Whether the carrier is primarily engaged in the business of providing solid waste collection or is primarily engaged in the business of providing a service other than the collection of solid waste; and
- (g) Whether the carrier holds itself out to the public as a transporter of solid waste.

5 The Commission has information from which it believes and therefore alleges that:

(1) The companies are engaged, at least in part, in the business of collecting and transporting recyclable materials, to recyclers, on behalf of commercial generators of construction, demolition and land clearing (CDL) waste, and the companies generally hold themselves out as such.

(2) The CDL waste that the companies collect from their customers contains more than an incidental or accidental amount of solid waste that has no value as a recyclable commodity.

(3) The companies transport this non-recyclable solid waste, on more than an occasional basis, to a Weyerhaeuser facility near Longview, Washington. Weyerhaeuser accepts the material, charging the companies a tipping fee. Weyerhaeuser mixes the CDL waste with waste generated from its own industrial operations and disposes of the mixture in its private landfill near Castle Rock, Washington. Weyerhaeuser accepts the CDL waste because it improves the internal drainage and slope stability of the landfill.

(4) To the extent that the companies transport CDL waste to Weyerhaeuser's facility as described above, the companies are not "collecting or transporting recyclable materials . . . to a recycler for use or reclamation" within the meaning of RCW 81.77.010(8). Instead, the companies are "operat[ing] for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation" within the meaning of RCW 81.77.040.

6 Pursuant to RCW 81.04.510, upon proof of the factual allegations set forth above and demonstration of the applicable legal principles, the Commission is authorized to issue an order requiring the companies to cease and desist from collecting more than an incidental or accidental amount of non-recyclable solid waste materials and transporting such solid waste to the Weyerhaeuser facility, as such activity is solid waste collection subject to regulation under RCW 81.77.

NOTICE OF PREHEARING CONFERENCE

7 **STATUTORY AUTHORITY:** The Commission has jurisdiction over this matter under RCW Title 80 and RCW Title 81, and has legal authority to regulate common carriers, and RCW 81.77, which authorizes the Commission to regulate solid waste collection companies. The statutes that apply to this matter include RCW 80.01, including but not limited to RCW 80.01.040, RCW 81.01.010, RCW 81.04.020, RCW 81.04.510, and RCW 81.77.040. The rules that apply to this matter include those within WAC 480-07 and WAC 480-70.

8 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.

9 At the hearing in this proceeding, in accordance with RCW 81.04.510, Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc., shall bear the burden of proving that the alleged operations are not subject to the provisions of RCW Title 81.

10 **THE COMMISSION GIVES NOTICE That the Commission will hold a prehearing conference in this matter at 1:30 p.m., on Thursday, January 24, 2008, in Room 108, First Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

11 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence and workpapers, to, identify the issues in the proceeding and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.

12 **INTERVENTION:** Persons who wish to intervene should file a petition to intervene in writing at least three business days before the date of the prehearing conference. *See WAC 480-07-355(a)*. The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. *See WAC 480-07-345(2)*. If any party or witness needs an interpreter or other assistance, they should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.

13 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440. The Commission specifically invokes the sanction provisions of WAC 480-07-450 which allow the Commission to seek penalties for a party in default.**

14 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carriers: Glacier Recycle, LLC
32300 148th Avenue SE
Auburn, WA 98092

Hungry Buzzard Recovery, LLC
P.O. Box 13528
Mill Creek, WA 98082

T&T Recovery, Inc.
4731 Lost Creek Road
Bellingham, WA 98229

Representative: Donald L. Anderson
Eisenhower & Carlson, PLLC
1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402
(253) 572-4500

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Jonathan Thompson
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1186

- 15 Administrative Law Judge Adam E. Torem from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, is designated to preside at the hearing.
- 16 Based on a review of Staff's report on its investigation of Glacier Recycle, LLC, Hungry Buzzard Recovery, LLC, and T&T Recovery, Inc., and all supporting documents, and consistent with RCW 80.01.060, the undersigned finds probable cause exists to enter this order and commence this proceeding.

DATED at Olympia, Washington, and effective December 28, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

Inquiries should be addressed to:

Executive Secretary
Washington Utilities and
Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE BE ADVISED that the hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and that if limited English-speaking or hearing impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be designated below and returned to:

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250.

(SUPPLY ALL REQUESTED INFORMATION)

Docket _____

Case Name: **In the Matter of Determining the Proper Carrier Classification of Glacier Recycle, LLC; Hungry Buzzard Recovery, LLC; and T&T Recovery, Inc.**

Hearing Date: _____ Hearing Location: _____

Primary
Language: _____

Hearing Impaired (Yes) (No)

Do you need a certified sign language interpreter: (Yes) (No)

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____